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11 UNITED STATES BANKRUPTCY COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 In re) Bk. No. 09-12647
15)
16 MATTHEW H. BARRINGTON,) CHAPTER 13
17)
18 Debtor.) R.S. No. DRP – 617
19)
20)
21) MOTION FOR RELIEF FROM
22) AUTOMATIC STAY
23)
24) Hearing-
25) Date : December 10, 2009
26) Time : 9:00 AM
27) Place : U.S. Bankruptcy Court
28) 99 South E Street
Santa Rosa, California
Courtroom (bkcy)

Viking Capital, Inc., its assignees and/or successors, move the Court for relief from the Automatic Stay provided by 11 U.S.C. §362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. §362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may commence and continue all acts necessary to foreclose under the Deed of Trust secured by Debtor's property. This Motion is brought pursuant to 11 U.S.C. §362(d)(1) for "cause" and due to the failure of Debtor to make required payments as set forth in the attached Declaration. Debtor's failure to make required

1 payments provides "cause" for relief from the Automatic Stay in accordance with the ruling of the
2 Bankruptcy Appellate Panel in In re: Ellis, 60 B.R. 432.

3
4 In addition, and in the event that this Court continues the Automatic Stay, Movant
5 will seek adequate protection of its secured interest pursuant to 11 U.S.C. §§361 and 362, including
6 a requirement that Debtor reinstates all past arrearages and immediately commence regular monthly
7 payments.

8 Movant alleges that the commercially reasonable value of the subject Property is
9 approximately \$300,000.00, as evidenced by Debtor's Schedules filed with this Court, a copy of
10 which is attached hereto and made a part hereof. Movant requests that this Court take judicial
11 notice of the aforementioned Schedules pursuant to Federal Rule of Evidence Section 201.

12 Movant also seeks an Order terminating and vacating the Automatic Stay for all
13 purposes as it pertains to Movant's interest in the subject real Property, including the prosecution of
14 appropriate foreclosure remedies, without the requirement of further notice or publication, except as
15 may be required by state law.

16 Furthermore, Movant seeks attorneys' fees and costs incurred in bringing this
17 Motion. Movant requests such fees pursuant to the Contract securing Movant's claim or pursuant to
18 11 U.S.C. §506(b). Post-petition attorneys' fees and costs for the within motion may be added to
19 the outstanding balance of the subject Note, pursuant to Travelers Casualty v. Pacific Gas and
20 Electric Co., 549 U.S. _____ (2007), and as allowed under applicable non-bankruptcy law.

21 In addition, Movant requests such further relief as is just.

22 This Movant also seeks an Order waiving the 10-day stay described by Bankruptcy
23 Rule 4001(a)(3).

24 This Motion shall be based on these moving papers, as well as the attached
25 Declaration.

26 Responsive pleadings, points and authorities and declarations are not required, but
27 may be filed, pursuant to Bankruptcy Local Rule 4001(f).
28

1 In the event neither Debtor, the Debtor's Counsel or the Trustee appears at a hearing
2 on this motion, the Court may grant relief from the Automatic Stay permitting moving party to
3 foreclose on the Debtor's property located at **379 Santa Clara Place, Santa Rosa, California** and
4 obtain possession of such property without further hearing.
5

6 WHEREFORE, Movant prays judgment as follows:

7 1.) For an Order granting relief from the Automatic Stay, permitting this Movant to
8 move ahead with foreclosure proceedings under Movant's Deed of Trust.

9 2.) For such Order regarding adequate protection of Movant's interest as this Court
10 deems proper.

11 3.) For attorneys' fees and costs for suit incurred herein.

12 4.) For an Order waiving the 10-day stay described by Bankruptcy Rule 4001(a)(3).

13 5.) For such other relief as this Court deems appropriate.

14 PROBER & RAPHAEL
15 A LAW CORPORATION

16 DATED: November 5, 2009

17 By /s/ Dean R. Prober Esquire
18 DEAN R. PROBER, ESQUIRE, #106207
19 Attorney for Secured Creditor
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